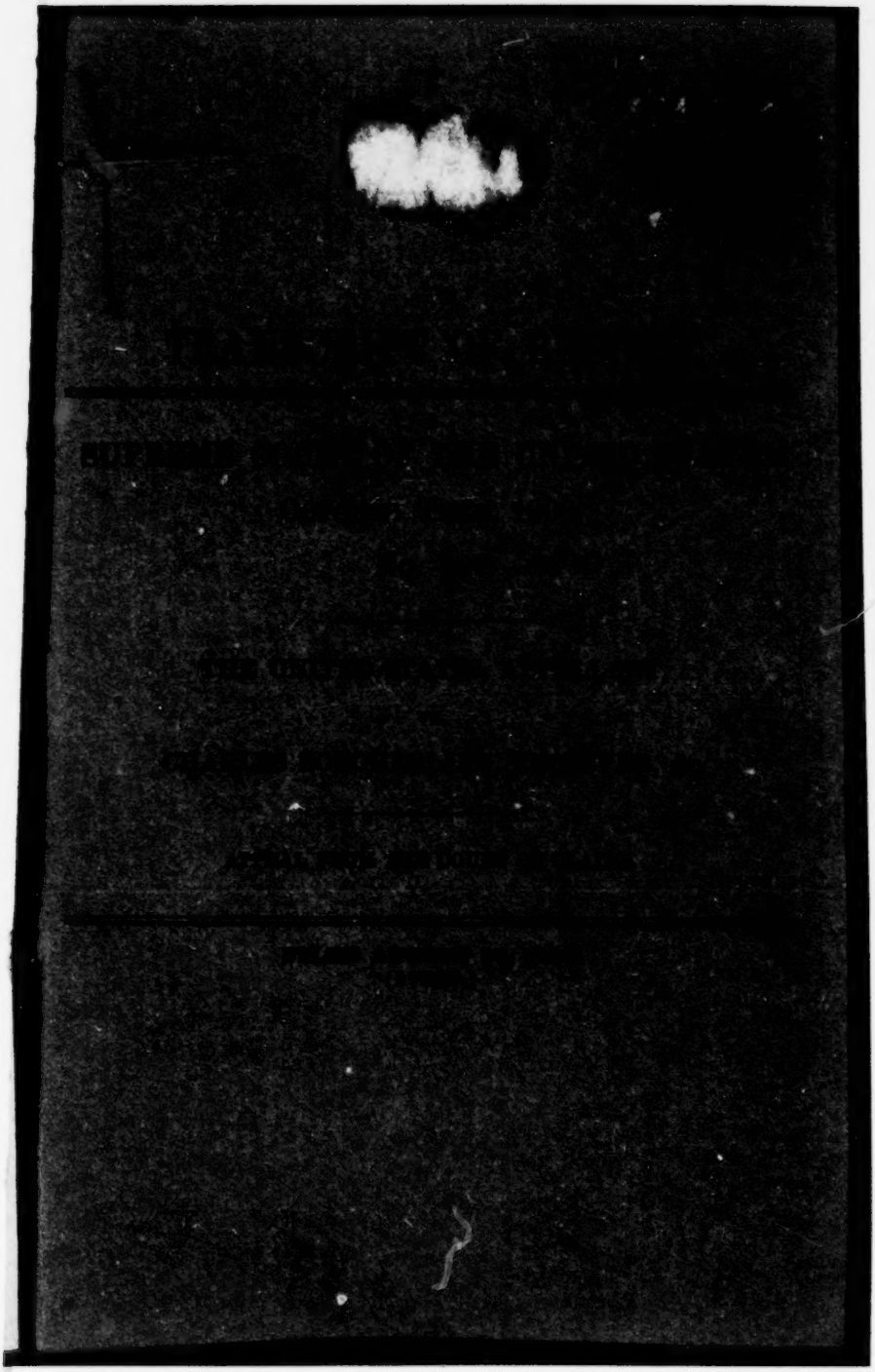

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 407.

THE UNITED STATES, APPELLANT,

vs.

CHARLES BORCHERLING, RECEIVER, &c.

APPEAL FROM THE COURT OF CLAIMS.

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In the Court of Claims.

CHARLES BORCHERLING, RECEIVER,
vs.
THE UNITED STATES. } No. 21140.

Petition—Filed August 12, 1898.

To the Honorable Court:

Your petitioner is a citizen of the United States and a resident of Newark, in the State of New Jersey. By a decree of the chancery court of New Jersey your petitioner on the 10th day of October, 1892, was duly appointed receiver for the property and things in action belonging to or held in trust for one Rodman M. Price, formerly a purser in the United States Navy, a resident of the said State of New Jersey, and duly subject to the jurisdiction of said court. By said appointment as a matter of fact the title to all the property, real and personal, of said Price passed to your petitioner by virtue of said decree; that your petitioner gave bond as required by the court and entered upon the duties of his office as such receiver; that your petitioner notified the Secretary of the Treasury of his said appointment and of the acceptance of his said office, and that by virtue of his said appointment your petitioner demanded some time previous to the 22d day of December, 1893, of the Secretary of the Treas-

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ury to be paid as belonging to him in his capacity as receiver, any money payable to said Rodman M. Price, under and upon an adjustment of his accounts under act of Congress approved 23d February, 1891; that under said act of Congress the accounting officer of the Treasury stated the accounts of said Rodman M. Price, and found on the 31st of August, 1892, that there was due him and payable to him on that date a certain sum of money; that on the 22d day of December, 1893, your petitioner again notified the Secretary of the Treasury that the money held in the Treasury as payable to said Price was claimed by your petitioner and notified the Secretary that he would hold the United States responsible if said money or any part thereof was paid to the said Price or his attorney; that your petitioner had previously given verbal explanation to the proper officers of the Treasury as to the claim by your petitioner in his capacity as receiver of such money, and that the officers of the Treasury well understood that it was claimed by the petitioner that by virtue of the assignment aforesaid there was no right in the officers of the Treasury to pay to said Price said money, instead of to your petitioner as such receiver.

Yet, notwithstanding such notice, and in violation of the right of your petitioner, the Secretary of the Treasury on the 23d of December, 1893, paid over to said Price the sum of seven thousand nine hundred dollars, which sum of money belonged, as your petitioner avers, to him as receiver, to be administered by him in the courts of New Jersey. Your petitioner says that such payment was null and void, and did not discharge the indebtedness of the United States to your petitioner as such receiver.

Wherefore, your petitioner claims that there is due him from the

defendant, the United States, the sum of seven thousand and nine hundred dollars, excluding all set offs and just grounds of defense, and demands judgment of this court in said sum.

My attorney is Frank W. Hackett, Washington, D. C.

CHARLES BORCHERLING.

STATE OF NEW JERSEY,
County of ———, ss:

Personally appearing, Charles Borcherling made oath that the statement by him subscribed above is true to the best of his knowledge and belief, before me, a notary public, resident at Newark, New Jersey, duly commissioned and sworn, as witness my notarial seal this 11th day of August, 1893.

[L. S.]

J. WHITEHEAD,
Notary Public in and for the State of New Jersey.

FRANK W. HACKETT, *for Claimant.*

3 II—*Traverse—Filed February 6, 1900.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

4 III.—*Findings of fact and conclusion of law—Filed April 2, 1900.*

This case having been heard by the Court of Claims, the court, upon the evidence, make the following

FINDINGS OF FACT:

I.

Rodman M. Price lived in the State of New Jersey and died there June 8, 1894. (Agreed facts based on the statement of facts in opinion of Harlan, J., in Price v. Forrest, 173 U. S., 410, page 1.)

II.

By act of Congress approved February 23, 1891, the Secretary of the Treasury of the United States was authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy and acting navy agent at San Francisco, crediting him with the sum paid over to and receipted for by

his successor, A. M. Van Nostrand, acting purser, January 14, 1850, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

III.

August 31, 1892, the Treasury officials adjusted Price's accounts and found there was due him $76,204.08, which included a credit of $75,000 that Price said he had advanced to Van Nostrand from his private funds.

IV.

In 1857 Samuel Forrest recovered in the supreme court of New Jersey a judgment against Price for $17,000 and costs. Execution on that judgment was returned unsatisfied. Forrest died in 1869, intestate.

In 1874 his widow, Anna M. Forrest, as administratrix of his estate, revived the judgment by scire facias. In her bill she prayed discovery, injunction, and the appointment of a receiver. Price and his wife answered. The cause slept till August 9, 1892, when Mrs. Forrest, administratrix, filed a petition stating that since filing her bill of complaint no payment had been made on the judgment against Price; that neither she nor her solicitors had been able to find any personalty or
5 real estate belonging to Price by levy upon and sale of which any part of the amount due on the judgment could be obtained; that it had lately come to her knowledge that about $45,000 was about to be paid Price by officers of the Treasury of the United States; that that sum was to be paid by the delivery to Price or his attorneys of a draft of the Treasurer of the United States payable to his order; that said draft was to be made and the transaction closed on the 15th day of August thereafter; and if Price obtained said money he would, unless restrained, put the same beyond the reach of the petitioner.

The petitioner prayed the appointment of a receiver of the draft, and that Price be ordered immediately on the receipt of such draft to indorse the same to the receiver, to the end that the same might be received by him as an officer of the court and disposed of according to law.

V.

The chancellor, August 8, 1892, issued a rule, returnable September 12, 1892, to show cause and restraining Price from making any indorsement of the draft referred to in the petition.

VI.

A duly certified copy of the order was served upon Price August 10, 1892. Nevertheless, after that date Price received from the Assistant Treasurer of the United States at Washington and, without permission of the court, collected four several drafts signed by that officer for the respective sums of $2,704.08, $13,500, $20,000, and $9,000, in all the sum of $45,204.08, leaving in the hands of the United States of the amount due on the settlement of Price's accounts the sum of about $31,000.

VII.

On the 10th day of October, 1892, Charles Borcherling was appointed by the chancery court receiver in said cause of the property and things in action belonging or due to or held in trust for Price at the time of issuing said executions, or at any time afterwards, and especially of said four drafts, with authority to possess, receive, and sue for such property and things in action and the evidence thereof; and it was made the duty of the receiver to hold such drafts subject to the further order of the court. The receiver was required to give bond in the sum of $40,000, conditioned for the faithful discharge of his duties. At the same time Price was ordered to convey and deliver to the receiver all such property and things in action and the evidence thereof, and especially forthwith to indorse and deliver the drafts to him, and he and all agents or attorneys appointed by him were enjoined and restrained from intermeddling with the receiver in regard to said drafts, and ordered, if in possession or control thereof, to deliver them to the receiver with an indorsement to that officer or to the clerk of the court for deposit; provided, the order should be void if the drafts other than the one for $9,000 were delivered with Price's indorsement to the clerk, the proceeds to be deposited to the credit of the cause. Price was expressly enjoined from making any indorsement or appropriation of the drafts other than to the receiver or the clerk for deposit.

6 VIII.

The receiver gave the required bond, and having entered upon the duties of his office, he caused a copy of the above order to be served upon Price, and demanded compliance with its provisions.

IX.

In 1892, the particular day not being stated, the chancery court issued an attachment against Price for contempt of court in disobeying the order of August 8, 1892. By an order made May 18, 1894, the court held him to be guilty of such contempt, and he was directed to pay the receiver the sum of $31,704.08, and a fine of $50 and costs, and in default of obedience to that order to be imprisoned in the county jail until it was complied with. (7 Dickinson (52 N. J., Eq.), 16, 31.) Upon appeal to the court of errors and appeals, the order of the chancery court was affirmed. (8 Dickinson (53 N. J., Eq.), 693.)

X.

The Treasury Department, at the time of allowing the $76,204.08, withheld $31,000, under the provisions of the act of March 3, 1875 (18 Stat., 481), to await the determination of a suit to be instituted against Price, or surety upon Van Nostrand's bond as acting purser, United States Navy.

The suit was instituted, but was dismissed some time previous to December 22, 1893.

XI.

On the 16th of July, 1892, counsel for Mrs. Forrest wrote the Secretary of the Treasury referring to a previous letter to the Department of May 14, 1891, in the matter of the claim of Rodman M. Price, and asking to be seasonably advised in the case the Department took action in the direction desired by Price.

The Secretary was advised that Mrs. Forrest could prove to the satisfaction of the Department that if Mr. Price did turn over $75,000, or any large sum, to the United States a part of that sum, namely, $17,078.04, must have belonged to Mrs. Forrest; that it was trust money, and it would not be equitable to cause that much to be paid to Price.

XII.

By letter of November 27, 1893, counsel for the receiver notified the Secretary of the Treasury of Borcherling's appointment and qualification by giving bond of $40,000; that Price, though personally enjoined, had, in contempt of the New Jersey court, indorsed the drafts and collected the proceeds. The letter inclosed is a certified copy of the order of the court, October 10, 1892, appointing the receiver. Counsel in behalf of the receiver made claim for the balance of $31,000 about to be paid Price under act of February 23, 1891.

The letter closed as follows: "I respectfully ask that comity be shown the chancellor of New Jersey, and that the draft to be issued in
7 payment of the balance due and payable to the order of Rodman M. Price be not delivered (or mailed) to said Price or his attorney, but be transmitted to the chancery court of the State of New Jersey, at Trenton, N. J., where said Price's rights will be abundantly protected, the receiver, of course, being an impartial officer of the court. I request that before action is taken (other than as asked for by the receiver) due notice may be given me that the receiver may be heard, to set forth the reasons why this disposition should be made of the drafts in question. Let me add that the Forrest judgment and interest now exceeds the sum of $60,000."

XIII.

On December 4, 1893, the chancery court of New Jersey, being informed by the receiver that Price, assisted by John C. Fay, esq., his attorney, was endeavoring to obtain payment at the Treasury of the balance, about $30,000, of this debt, and appropriate it for his own use, issued orders against Price, enjoining him from seeking to obtain payment of any part of that sum.

XIV.

On December 6, 1893, the receiver notified the Secretary of the Treasury, by letter, that a copy of injunction of December 4 had been served upon Price, and inclosed a copy of the same to the Secretary. He also invited the attention of the Secretary to the opinion of the Court of Claims in Redfield v. United States, in the twenty-seventh volume of reports of the court; informed him that he (the receiver) had applied to the supreme

court of the District of Columbia for an injunction, and asked that if that court should not grant relief he might have the benefit of the injunction of the New Jersey court now brought to the Secretary's notice. The receiver asked that if no relief were granted by the supreme court of the District that the Secretary send the drafts (otherwise to be handed to R. M. Price) to the chancellor of New Jersey, at Trenton.

XV.

The supreme court of the District of Columbia, December 19, 1893, in a proceeding for injunction upon bill of Borcherling, receiver, and Anna M. Forrest, administratrix, after personal service upon Price and Fay, enjoined Price from receiving, assigning, collecting, or indorsing to his own use, by himself or by attorney, any warrants or drafts from the Treasury of the United States in payment, in whole or in part, of any balance remaining unpaid under act of February 23, 1891, until the further order of the court; and it being the design of this order in no wise to interfere with the claim of any creditor of the said Rodman M. Price resident in this District against said Price, it is further ordered and decreed that, upon the representation of any person so claiming to be a creditor in this District and the establishment of such claim in a manner that shall satisfy the court of the bona fide existence of such claim, so much of said balance as shall be sufficient to cover any and all such claims so established shall be considered as exonerated from the effect of this decree.

8 XVI.

The supreme court of the District, on the 22d of December, 1893, passed the following order in the said suit:

"From the affidavits of John C. Fay and Jeremiah M. Wilson, claimants, and the assent and affidavit of the said Rodman M. Price, filed this day, it appearing to the satisfaction of the court that John C. Fay, Richard J. Bright, Frank S. Bright, Samuel Shellabarger, J. M. Wilson, and M. L. Woods, residents of the District of Columbia, appear to be bona fide creditors of the defendant, Rodman M. Price, and it appearing to the satisfaction of the court that as such they have bona fide claims for services rendered said Price to the extent of $7,900, it is ordered that the sum of seven thousand nine hundred dollars ($7,900) shall be exonerated from the effects of the decree passed herein on the 19th of December, instant, restraining and enjoining Rodman M. Price from receiving, etc., any warrants or drafts from the Treasury in payment of the whole or any part of the balance due him under the act of February 23, 1891; and said injunction order shall not operate to effect said sum of seven thousand nine hundred dollars."

XVII.

Counsel for the receiver, Friday, December 22, 1893, addressed the Assistant Secretary of the Treasury, setting forth the fact that the order of that day had been hastily acted upon, and explaining that the judge sent a verbal order to counsel to be in court at 1 o'clock; that he had already told Mr. Fay, attorney of Price, that he wanted copies of his

papers served two days in advance, in compliance with the rules; that at 12 o'clock he had been telegraphed for to go out of the city on account of illness in his family, and had sent a message to that effect to the judge. The letter also notified the Secretary that the receiver claimed that the money under the Redfield Case belonged to the receiver and not to Price. Counsel asked a reasonable delay, that he was obliged to leave Washington, but expected fully to return Saturday night, and expressed hope that "no action will be railroaded through to pay out any money to-morrow." He also notified the Treasury that a mandatory order had been issued against Price in New Jersey, and asked that before any action was taken to paying Price, that he (counsel) might be heard to show reason why the money had not passed to the receiver under the ruling of the Redfield Case, copy of which he inclosed.

XVIII.

The same day counsel for the receiver sent the following telegram to the Secretary of the Treasury: "Washington, D. C., December 22, 1893.—To Secretary of Treasury, Washington, D. C.: Please defer action in Price matter over to-morrow. The receiver notifies Treasury that he claims the money is his, not Price's, and will hold the United States responsible if paid Price or his attorney. Frank W. Hackett, attorney for receiver."

9

XIX.

On the same day, namely, Friday, December 22, 1893, the Acting Secretary of the Treasury indorsed a copy of the order of the supreme court of the District of Columbia of December 22, with a reference to the Second Comptroller to issue a certificate in favor of Rodman M. Price for $7,900, "the balance to be withheld pending an injunction against Price from receiving said balance."

XX.

On the same day, Friday, December 22, 1893, Second Comptroller certified that there were due and payable to Rodman M. Price $7,900; the balance, $23,100, to be withheld "pending an injunction against Price from recovering said balance now pending before the supreme court of the District of Columbia."

The draft on navy warrant No. 907, dated December 23, 1893, and payable to the order of Rodman M. Price, late purser, United States Navy, for $7,900, was paid at the Treasury December 23, 1893, by the Treasurer of the United States, said draft being indorsed "Rodman M. Price, late purser, United States Navy; John C. Fay."

XXI.

On the 25th of December, 1893, Borcherling, receiver, addressed a letter to the Secretary of the Treasury, claiming that on and after October 10, 1892, all property in the right to Price to receive from the United States the balance under the act approved February 19, 1881,

passed to him, the receiver. He reminded the Secretary that on the 27th of November, 1893, he had the honor of advising the Treasury of his appointment and inclosing a copy of the order of the chancellor; that Mr. Fay, attorney for Mr. Price, had full notice of the receivership as well as of the injunction of the court of chancery addressed to Price and his attorneys forbidding them from receiving any part of the $31,000; and that both Fay and Price had committed contempt of court. The receiver asked the Secretary to take the opinion of the Attorney-General upon the following questions:

1. Did the appointment of a receiver by the chancery court of New Jersey convey to that officer the property in the claim against the United States of Rodman M. Price?

2. Would payment to the receiver be a quittance to the United States in the premises?

3. Can the Secretary of the Treasury safely pay to Rodman M. Price or his heirs the money still unpaid under the act of February 19, 1891, now that the receiver claims that it should be paid over to him?

A similar letter was addressed by the receiver and his counsel to the Secretary of the Navy.

XXII.

On April 1, 1899, the Comptroller ordered the balance, $23,100, to be paid to Charles Borcherling, receiver, and the same was paid at the Treasury that day to Mr. Borcherling, the present claimant.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decide, as a conclusion of law, that the claimant is entitled to recover from the United States the sum of seven thousand and nine hundred dollars ($7,900).

10 IV.—*Opinion of the court.*

PEELLE, J., delivered the opinion of the court:

The findings present the question broadly stated as to whether the Secretary of the Treasury has the discretion in law to pay or not to pay a receiver, appointed by a State court, of the property and things in action of a creditor of the United States, for the purpose of reaching the assets or choses in action of such creditor for the payment of his debts; and if payment be made to such creditor by such officer after due notice of the appointment of such receiver and the order restraining such creditor from receiving money to his credit, whether a judgment can be recovered in this court in favor of the receiver for the amount so paid.

The material and substantial facts disclosed by the findings are these:

In 1857 Samuel Forrest recovered a judgment against Rodman M. Price in the supreme court of the State of New Jersey for $17,000.

In 1874, Forrest, having in the meantime died, and execution having been returned unsatisfied, his widow, as administratrix, revived the judgment by scire facias and in her bill prayed discovery, injunction, and the appointment of a receiver, to which answer was filed. No further proceedings were had therein until 1892, at which time said judgment with the interest accrued thereon amounted to over $60,000.

In February, 1891, the Congress enacted a law whereby the Secretary of the Treasury was authorized to settle and adjust the accounts of said Price, late purser of the United States Navy, and to pay to him, or his heirs, any sum found due thereon.

In the adjustment thus made there were found due to Price $76,204.08, of which $75,000 Price claimed had been advanced by him out of his private funds to A. M. Van Nostrand, his successor in office.

In the adjustment of said accounts $31,000 was withheld from Price to await the determination of a suit to be thereafter brought against Price as surety upon Van Nostrand's bond as acting purser of the United States Navy.

For the payment of the balance, $45,204.08, drafts were issued and made payable to Price; and in the meantime the chancery court issued an order restraining him from collecting or making any indorsement on the drafts referred to, of which order a certified copy was served on him. But notwithstanding said order he received from the assistant treasurer at Washington, D. C., payment of said drafts aggregating the sum of $45,204.08.

October 10, 1892, thereafter, the claimant herein was appointed by the chancery court receiver in said cause of the property and things in action belonging or due to or held in trust for Price, with authority to possess, receive, and sue for such property and things in action and the evidence thereof. The receiver gave bond in the sum of $40,000, as required by the court. A duly certified copy of the order of appointment was sent to the Secretary of the Treasury, about which there is no controversy.

Thereafter, an attachment was issued against Price for contempt of court in disobeying the order restraining him from indorsing the
11 drafts and receiving payment thereon, and he was fined $50 for contempt and directed to pay the residue of the money, $31,000, to the receiver, which proceedings were affirmed on appeal to the court of errors and appeals of the State of New Jersey.

The suit against Price as surety on Van Nostrand's bond was commenced, but was thereafter, prior to December 22, 1893, dismissed.

On December 4, 1893, the chancery court of New Jersey issued an order enjoining Price from seeking to obtain any part of said balance of $31,000 so remaining to his credit, of which order a duly certified copy was sent to the Secretary of the Treasury, after which the receiver made formal demand upon the Secretary for the payment of the money to him. The suit against Price as surety on the bond of Van Nostrand was commenced, but dismissed prior to December 22, 1893.

Thereafter, the supreme court of the District of Columbia in a proceeding instituted by the claimant as receiver and Anna M. Forrest, administratrix of the estate of Samuel Forrest, after personal service upon Price and his attorney, John C. Fay, enjoined Price from receiving, assigning, collecting, or indorsing to his own use, by himself or by his attorney, any warrants or drafts from the Treasurer of the United States in payment in whole or in part of any of said balance of $31,000 until the further order of the court, not, however, interfering with the claim of any creditor of Price resident within the District of Columbia.

December 22, 1893, in said supreme court, upon the affidavits of said Fay and Jeremiah M. Wilson, with the assent and affidavit of Price, it

was made to appear to the court that said parties and others named in the findings, residents of said District, were bona fide creditors of Price, and as such had claims against him aggregating $7,900, and in view thereof it was ordered by the court that the said sum be exonerated from the effect of the decree restraining Price from receiving any warrant or draft as aforesaid.

On the same day the order was modified the Comptroller certified a balance in Price's favor of $7,900, leaving $23,100 still to the credit of Price, which was withheld pending the injunction against Price in the supreme court of the District, as aforesaid.

December 23, 1893, in disregard of the restraining order of the chancery court of New Jersey, a draft was issued to Price, late purser of the United States Navy, for said sum of $7,900, and he indorsed the same to John C. Fay, to whom the money was paid, as appears from their indorsements on said draft set out in the findings.

December 25, 1893, the receiver addressed a letter to the Secretary in which, among other things, the Secretary was requested to take the opinion of the Attorney-General upon the questions involved, which was done; and thereafter, April 1, 1899, the Comptroller ordered the said balance of $23,100 to be paid to the claimant as receiver, which was done.

It will thus be seen that the particular question before the court is as to the right of the receiver to recover judgment for the $7,900 so paid to Fay on the draft issued to Price.

The claimant's contention is that the $31,000 standing on the books of the Treasury Department to the credit of Price was a personal asset within the State of New Jersey, and that as Price was domiciled in New Jersey, where he was personally served with process, the title to
12 the claim passed to the receiver by operation of the laws of New Jersey, and therefore entitle him to collect and receive from the United States Treasury the money thereon, to the exclusion of Price.

That contention the defendants deny, on the theory, substantially, that the laws of one sovereignty have no force by their own operation within the jurisdiction of another sovereignty.

In the case of Ogden v. Saunders (12 Wheat., 213), where the question was first distinctly presented to the Supreme Court, it was ruled that an insolvent or bankrupt law in one State did not affect the rights of creditors who were citizens of other States; and the principles thus announced were adhered to five years later in the cases of Boyle v. Zacharie (6 Pet., 348 and 635).

Following the rule thus announced and affirmed came the decision in 1854 in the well-known case of Booth v. Clark (17 Howard, 322), where it was held that a receiver appointed under a creditor's bill filed by the court of chancery of New York against a resident of that State did not vest in the receiver title to a claim in favor of such debtor against a foreign Government (Mexico).

The substance and effect of that decision is that the receiver so appointed was limited in his action to the territorial limits of that State; that the laws of New York, no matter what the decree of the court in respect to the authority of the receiver to sue elsewhere, did not extend to a foreign jurisdiction or to the jurisdiction of another State.

It is unquestionably the recognized and well-settled rule that a court

can not endow or confer upon its officers powers beyond its own jurisdiction. Bank of Augusta v. Earle (13 Pet., 519); Pennoyer v. Nebb (95 U. S., 714); Pana v. Bowler (107 U. S., 529); Hilton v. Guyot (159 U. S. R., 113 and 163).

The personal property of a debtor passes to the receiver as a general rule by operation of law without any act of transfer on the part of the debtor, but in respect of the title to property without the State of the receiver's appointment he "takes the property subject to every equity of foreign creditors and subject to all remedies of foreign countries." (Smith on Receivers, 109 et seq.)

However, the foregoing well-established rules do not prevent one State or sovereignty from recognizing the laws of another by that other rule known as comity between States or sovereignties and by which is meant "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws." (Hilton v. Guyot, supra, p. 164.)

While the obligation of the laws of one State or nation within the territory of another is derived from the voluntary consent of the latter, still, if not prejudicial to its interests or contrary or repugnant to its known policy, silence in respect of such rules or laws will warrant courts of justice in presuming the tacit adoption of them by their own Government; and in determining the rights of persons under such foreign laws the courts will adopt them for that purpose. (Story's Conflict of Laws, section 38.)

Rights thus determined become as fully settled as though adjudicated upon by the courts of such foreign jurisdiction.

13 Had the Secretary of the Treasury paid, or caused to be paid, to the receiver the $31,000 standing to the credit of Price, the receipt of the receiver therefor would have exonerated the Treasury and been as complete a defense to any claim thereafter made by Price as though it had been signed by him.

Hence, had the money been paid to the receiver after notice to the Secretary of his appointment, or to an administrator likewise appointed, the liability of the United States would thereby have been discharged. (Vaughn v. Northup, 15 Pet., 1.)

And this we say, though the restraining order issued by the supreme court of the District of Columbia was modified in respect of the creditors of Price, resident in the District, as such restraining order, as originally entered or as modified, did not in any way restrain the Secretary or any other officer of the Treasury Department from paying the money to the receiver, and payment to the receiver would have exonerated the United States from any payment to such creditors, even after the modification of the restraining order.

The only purpose or effect of the order was to restrain Price from receiving any part of the money; and when the order was modified, exonerating therefrom the sum of $7,900, due the creditors of Price resident within the District, the Secretary was not thereby relieved from whatever obligation may have been imposed upon him by reason of the previous notice of the claimant's appointment as receiver of the property

and things in action of Price, and of the order of the chancery court of New Jersey, still in force, restraining Price from collecting or receiving any draft or payment from the Treasury on account of said balance of $31,000.

The modification of the restraining order left Price and his creditors resident within said District the same as though no restraining order had been granted, and did not in any way authorize Price or his creditors to collect money from the Treasury. If such right existed it was independent of the restraining order and the modification thereof. So that the failure or refusal of the Secretary to pay the money to the receiver could not well have been founded upon any supposable risk of having to pay the money again.

His refusal to pay the receiver, therefore, must have been based upon his supposed right in law to pay or not to pay in the exercise of the discretion lodged in him; and having, as the head of an Executive Department, exercised his discretion by refusing to pay to the receiver, his action, the defendants contend, is conclusive upon the courts.

As between the States or as between the Federal Government and a foreign government there can be no question but that the principle for which the defendants contend would apply.

Do they, as between the Federal Government and a State? While the several States are territorially separate and distinct from each other, and possess sovereign rights and powers under the Constitution distinct from those of the Federal Government, they are nevertheless each an integral part thereof.

By virtue of the claimant's appointment by the chancery court of New Jersey, as the receiver of the personal property of Price for the payment of an unsatisfied judgment, he thereby became entitled to the pos-
14 session of all the personal property and choses in action of which Price was possessed or to which he was entitled at the time of his appointment, except such as may have been exempt from levy and sale for the payment of debts and subject to the rights of creditors of Price resident within a foreign jurisdiction as to any property located therein. In other words, as between Price and the receiver, the appointment divested Price of all right and title in and to his personal property and choses in action, wherever located, and clothed the receiver with the rights thus divested, subject to the future order of the court in respect of the rights of Price, after the payment of the judgment out of the property and choses in action so transferred.

Thus the receiver took the place of Price and thereby received "authority to possess, receive, and in his own name, as such receiver, sue for such property or things in action." (Revision Laws of N. J., 120.)

There is no controversy as to the authority and right of the receiver to possess himself of the personal property and choses in action of Price within the territorial jurisdiction of New Jersey, as such property passed to the receiver in virtue of his appointment under the adjudication of the courts of New Jersey, without formal assignment by the debtor. (Harrison v. Maxwell, 44 N. J., 316.)

In the able brief of the counsel for the defendants it is conceded that "when both debtor and creditor and the property of the debtor are within the reach of one sovereignty, there is little room for contention,"

but he contends "that the debt due from the United States to Price could not be transferred from Price to the claimant by the operation of the laws of New Jersey nor by any decree that the courts of New Jersey operating under such laws could make;" that such claim, he contends, "could only pass by virtue of the laws of the United States."

It becomes important, therefore, to inquire whether the claim of Price, a resident of New Jersey, as against the United States was an asset or chose in action as other personal property of the debtor within that State.

This question seems to be answered in the case of Vaughn v. Northup (15 Pet., 1, 6), where Mr. Justice Story, speaking for the court, said: "The debts due from the Government of the United States have no locality at the seat of Government. The United States, in their sovereign capacity, have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union; and the debts due by them are not to be treated like the debts of a private debtor, which constitute local assets in his own domicile." For the reason thus given it was held, in that case, that "the administrator of a creditor of the Government duly appointed in the State where he was domiciled at his death has full authority to receive payment and give a full discharge of the debt due to his intestate in any place where the Government may choose to pay it, whether it be at the seat of Government or at any other place where the public funds are deposited." And, furthermore, "that moneys so received constituted assets under that administration, for which he was accountable to the proper tribunals in Kentucky," where he was appointed.

Under that decision debts against "the United States have no locality at the seat of Government;" and if not there, then they have none in any particular locality and may be discharged wherever the Government may choose to pay them.

15 The claim due Price, therefore, was as much an asset in New Jersey as in the District of Columbia, and inasmuch as Price was domiciled in New Jersey, where he was personally served with process, such claim, at least as against the creditors of Price domiciled in the District of Columbia, passed to the receiver in virtue of his appointment, of which appointment such creditors had due notice.

Therefore, the payment of the money or any part thereof by the Secretary of the Treasury to Price or to such creditors was in derogation of the settled law of New Jersey. (Miller v. McKenzie, 2 Stewart, 291.) Did not the claimant, as receiver, therefore have the right to collect the money? The right of Price to receive and possess himself of the money ceased to exist when the receiver was appointed, and he was, in addition thereto, restrained from so doing, of all which the Secretary of the Treasury was duly notified. Hence the only one in law, at least as against Price and such creditors, entitled to collect the money was the receiver.

The right of a receiver, appointed by a State court, to maintain an action in this court was sustained in the case of Redfield v. The United States (27 C. Cls. R., 393), following the decision in the case of Erwin v. The United States (97 U. S. R., 392); Goodman v. Niblack (102 U. S. R., 556).

It may be said, however, that, inasmuch as the money sought to be

reached in that case had not been paid to the creditor in whose favor it stood on the books of the Treasury after the receiver was appointed, that therefore the court, in the exercise of its judicial discretion within the rule announced in the case of Hilton v. Guyot (supra), might show comity to the State of New York, where the receiver was appointed, by adopting her laws in determining the rights of the receiver in respect of such claim.

But the main question settled in that case, from which no appeal was taken, was that the claim against the United States was, in virtue of the appointment of the receiver, transferred to him by operation of law, and, if so, then it was by operation of the laws of the State of New York, where the receiver had been appointed, and he alone was entitled to receive the money thereon from the Treasury, as such transfer was not prohibited by the act of February 26, 1853 (10 Stat. L., 170, now Rev. Stat., sec. 3477). And when so paid to him the money became an asset in his hands for which he was accountable to the proper court in New York, as in the case of Vaughn v. Northup (supra).

Under section 1, Article XIV of the Constitution, the claimant was and is a citizen of the United States as well as of the State wherein he resides, but the circuit and district courts of the United States within the several States are neither probate courts nor courts for the settlement of the affairs of insolvent debtors, except in bankruptcy proceedings, and therefore many reasons exist why the Executive Departments, as well as the courts of the United States, should recognize as of binding force the laws of the several States in respect thereto.

In other words, the claimant, a citizen of the United States and of the State of New Jersey, wherein both he and Price reside and where the claim against the Government in favor of Price existed as a chose in action so far as it had local existence, was within the jurisdiction of the court of chancery in New Jersey, and that being so the claim in
16 favor of Price, as well as his right to collect the money thereon from the Treasury, were transferred in law to the receiver upon his appointment. Prior thereto the chose in action was in Price, and he could have maintained an action under the act of March 3, 1887 (24 Stat. L., 505), in the United States circuit court in New Jersey. Thereafter can it be questioned but that such right was in the receiver?

In the case of Crescent City Live Stock Company v. Butchers' Union Slaughter-House Company (120 U. S. R., 141, 146) the court cites with approval the case of Dupasseur v. Rochereau (21 Wall., 130, 135), where it was said: "No higher sanctity or effect can be claimed for the judgment of the circuit court of the United States rendered in such a case, under such circumstances, than is due to the judgments of the State courts in a like case and under similar circumstances."

See also the case of The Hancock National Bank v. Jonathan W. Farnum (175 U. S.,—), decided March 12, 1900, to the same effect.

The jurisdiction of the Court of Claims extends throughout the United States. "It issues writs to every part of the United States, and is specially authorized to enforce them." (10 Stat. L., p. 612, sec. 3.) (Jones & Brown's Case, 1 C. Cls. R., 383, 398.)

Since that decision it has been held, uniformly and invariably, in all questions relating to the validity of contracts, the title to property, the

distribution of estates, and the proper party to prosecute a case, that this court is to all intents and purposes sitting in the State where the cause of action arose or where the claim accrued.

Congress has supplied the accounting officers with effective means in such a case as this to protect the Government. As long ago as 1870 a case of conflicting claimants arose and was referred to this court by the Secretary of War under section 1063, Revised Statutes. It was held that the court in such a case must assume jurisdiction and determine the conflicting rights, rendering final judgment for the one claimant and final judgment against the other. (Bright and Hutchings Case, 6 C. Cls. R., 118; 8 id., 326.) Since this, similar references have been made by different heads of Executive Departments and by the Comptroller of the Treasury, and always with the effect of fully protecting the Government.

This view, we think, is sustained by the Supreme Court in the case of Price v. Forrest (173 U. S. R., 410, 422), wherein a controversy arose between the receiver, claimant herein, and the heirs of Price as to who was entitled to receive the money from the United States.

The heirs denied the jurisdiction of the chancery court of New Jersey to sequester the money in dispute in the Treasury, and insisted that whatever remained there belonged to them. The court decided that the receiver was entitled to the money and restrained the heirs of Price and their attorney, John C. Fay, to whom they had given a power of attorney to collect, and who was also a defendant in that case, as was the administrator of the estate of Price, from making any demand upon or application to the Government for the money or from receiving the same from the Treasury or any officer thereof. On appeal to the court of errors and appeals the decree was affirmed. (56 N. J. Eq.)

The decree thus affirmed was reviewed in the Supreme Court, Mr. Justice Harlan, delivering the opinion of the court, saying, in part: "The ultimate question in this case is whether the plaintiffs in error, 17 as heirs of Rodman M. Price, are entitled to receive from the United States the amount standing to the credit of the deceased on the books of the Treasury, and which represents the balance of a sum found in his lifetime, under the authority of a special act of Congress, to be due him upon an adjustment of his account as a purser in the Navy." Then, after stating the facts of the case as set forth in the findings herein, and reviewing the authorities construing section 3477, the court in relation thereto held that the transfer of the claim from Price "to the receiver was the act of the law, and whatever remained, whether of property or money, in his hands after satisfying the judgment," etc., was to be disposed of according to the laws of New Jersey. Furthermore, on page 423, it is said:

"As this court has said, the object of Congress by section 3477 was to protect the Government and not the claimant, and to prevent frauds upon the Treasury. (Bailey v. United States, 109 U. S., 432; Hobbs v. McLean, 117 U. S., 567; Freedman's Savings Co. v. Shepherd, 127 U. S., 494, 506.) There was no purpose to aid those who had claims for money against the United States in disregarding the just demands of their creditors. We perceive nothing in the words or object of the statute that prevents any court of competent jurisdiction as to subject-matter and parties from making such orders as may be necessary or appropriate

to prevent one who has a claim for money against the Government from withdrawing the proceeds of such claim from the reach of his creditors; provided such orders do not interfere with the examination and allowance or rejection of such claim by the proper officers of the Government, nor in anywise obstruct any action that such officers may legally take under the statutes relating to the allowance or payment of claims against the United States. If a court, in an action against such claimant by one of his creditors, should, for the protection of the creditor, forbid the claimant from collecting his demand except through a receiver, who should hold the proceeds subject to be disposed of according to law, under the order of court, we are unable to say that such action would be inconsistent with section 3477. It may be that the officers charged with the duty of allowing or disallowing claims against the Government are not required to recognize a receiver of a claim appointed by a court, and may, if the claim be allowed, refuse to make payment, except as provided in section 3477."

That section, to prevent frauds against the Treasury, in substance provides that "all transfers and assignments made of any claim upon the United States," and all powers of attorney for receiving payment of such claim, shall be null and void unless "freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof." And yet in construing that section the court in the case of Baily and others v. The United States (109 U. S. R., 433, 439) held, in substance, that the statute was for the protection of the Government, and that payment made to an attorney in fact, constituted such by power of attorney executed before the allowance of a claim, was good as between the Government and such claimant if such power of attorney had not been revoked at the time of payment.

In the case of Erwin v. United States (supra), where cotton had been captured by the military forces of the United States and sold and
18 the proceeds paid into the Treasury, the claim of the owner thereto was held to be property which passed to his assignee in bankruptcy and that under the section of the statute referred to the passing of claims to heirs, devisees, or assignees in bankruptcy was not prohibited thereby; that the transfer of title by operation of law took the case out of the statute.

In the case of Goodman v. Niblack (supra) a voluntary assignment for the benefit of creditors was upheld, the court, at p. 561, saying: "There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment;" that such a transfer was not "within the evil which Congress sought to suppress by the act of 1853."

Referring again to the case of Price v. Forrest (supra), the court, quoting the opinion of the Second Comptroller to the effect that the chancery court of New Jersey could not compel payment to the receiver of the money in the Treasury to the credit of Price, says: "Even if it be true that the final order of the State court in relation to the money in question would not impose any legal duty upon the officers of the Treasury, it does not follow that the order of the court appointing the receiver would be null and void as between those who are parties to the cause and who are before the court."

Therefore, as between the parties to the suit who were before the court, the receiver was entitled to the money in the Treasury due Price. If so, can it be held that the Treasury officials, who had due notice not only of the appointment of a receiver but of the order restraining Price from collecting the money, may or may not disregard such order, in the absence of any claim against Price by way of offset?

This they did, and paid the money to Price, in disregard of the order of the chancery court of New Jersey. There being no purpose to aid those who have claims against the Government "in disregarding the just demand of their creditors," and as there is nothing to prevent "any court of competent jurisdiction as to subject-matter and parties from making such orders as may be necessary or appropriate to prevent one who has a claim for money against the Government from withdrawing the proceeds of such claim from the reach of his creditors," there is certainly no reason in law why a court in an action against such debtor by one of his creditors should not forbid such debtor "from collecting his demand except through a receiver, who should hold the proceeds subject to be disposed of according to law under the order of court" (Revision of N. J. Laws, 1877, sec. 26, p. 394); and such action, the court say, would not be inconsistent with section 3477.

If not inconsistent therewith, then it follows, it seems to us, that the transfer of the claim by operation of law takes the place of the voluntary transfer provided for in said section and clothes the receiver with the ultimate right to collect the money from the Treasury, as otherwise the purpose of the appointment of a receiver could be defeated by the refusal of the Treasury officials to recognize him as such. The transfer by operation of law, therefore, can only be made effective by payment of the money to the receiver by the Treasury, and in doing this the Government runs no risk, for payment to the receiver is as complete a discharge as though paid to the original creditor. (Goodman v. Niblack, supra.)

In reaching the conclusion we have, we are not unmindful that as between the States and as between the Federal Government and a foreign government a different rule prevails, and but for the decisions to which we have referred we should be inclined to follow the rule otherwise so well established.

If we are mistaken in our view as to the effect of the decisions upon which we have relied, an opportunity will be presented for a review thereof on appeal as to whether they do apply to the precise question in this case, which, so far as we are aware, has never been presented to the Supreme Court, i. e., the question as to whether the Treasury officials have the right in law to pay a creditor of the Government after the appointment by a State court, of competent jurisdiction, of a receiver of the property and things in action of such creditor, domiciled in such State, for the payment of his debts after due notice thereof.

Therefore, for the reasons we have given, we must hold that the claimant was entitled to receive from the Treasury the money which was due Price, and that payment thereof to Price did not discharge the defendants from their obligation to the receiver after notice of his appointment and of the order restraining Price from receiving the money, and he is therefore entitled to recover the sum of $7,900, for which amount judgment is ordered to be entered.

19 V.—*Judgment of the court.*

CHARLES BORCHERLING
vs.
THE UNITED STATES. } No. 21140.

At a Court of Claims held in the city of Washington on the second day of April, A. D. 1900, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, Charles Borcherling, do have and recover of and from the United States the sum of seven thousand nine hundred dollars ($7,900).

BY THE COURT.

20 VI.—*Application for and allowance of appeal.*

CHARLES BORCHERLING
vs.
THE UNITED STATES. } No. 21140.

From the judgment rendered in the above-entitled cause on the 2nd day of April, 1900, in favor of claimant, the defendants, by their Attorney-General, on the 16th day of April, 1900, make application for and give notice of an appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Assistant Attorney-General.

Filed April 16, 1900.

Order.

The defendants' appeal in this case, filed April 16, 1900, is allowed.

CHARLES C. NOTT,
Chief Justice.

AUGUST 25, 1900.

21 In the Court of Claims.

CHARLES BORCHERLING, RECEIVER,
vs.
THE UNITED STATES. } No. 21140.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 28th day of August, A. D. 1900.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

22 (Indorsement on cover:) File, No. 17892. Court of Claims. Term, No. 407. The United States, appellant, vs. Charles Borcherling, receiver, &c. Filed August 30th, 1900.

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